

MOTION FILED
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1976

No. 75-909

ENVIRONMENTAL PROTECTION AGENCY,
v. *Petitioner*
EDMUND G. BROWN, GOVERNOR OF THE STATE
OF CALIFORNIA, ET AL.

No. 75-960

ENVIRONMENTAL PROTECTION AGENCY,
v. *Petitioner*
STATE OF MARYLAND

No. 75-1050

COMMONWEALTH OF VIRGINIA, *ex rel.*
STATE AIR POLLUTION CONTROL BOARD,
v. *Petitioner*
RUSSELL E. TRAIN, ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY

No. 75-1055

RUSSELL E. TRAIN, ADMINISTRATOR OF THE
ENVIRONMENTAL PROTECTION AGENCY,
v. *Petitioner*
DISTRICT OF COLUMBIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURTS OF APPEALS FOR THE NINTH, FOURTH,
AND DISTRICT OF COLUMBIA CIRCUITS

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
and
BRIEF OF NATURAL RESOURCES DEFENSE
COUNCIL, INC., AS AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Natural Resources Defense Council, Inc. (NRDC) hereby respectfully moves for leave to file the attached brief *amicus curiae* in these consolidated cases. Request for consent was made of all parties in these cases. The following parties granted consent: U.S. Environmental Protection Agency (EPA); District of Columbia; Prince William County, Virginia; City of Alexandria, Virginia; the California respondents in No. 75-909; and the petitioners-intervenors in No. 75-1055. The following parties refused consent: the Commonwealth of Virginia; City of Fairfax, Virginia; and the State of Arizona. The State of Maryland did not respond to the request for consent.

The interest of NRDC in these cases arises from its efforts on behalf of its members to promote the development and implementation of air pollution control programs adequate to protect public health and welfare.

NRDC is a national membership organization dedicated to the preservation and defense of the human environment and natural resources of the United States. NRDC's members currently total over 22,000 individuals, residing in all States and territories (excluding American Samoa) of the United States and in several other nations. NRDC is a non-profit corporation organized under the laws of the State of New York, with offices at 15 West 44th Street, New York, New York, 917 15th Street, N.W., Washington, D.C., and 2345 Yale Street Palo Alto, California. Many of NRDC's members live in areas of the United States which routinely experience levels of air pollution harmful to health.

These cases involve a challenge to regulations adopted by EPA to reduce air pollution resulting from the use of motor vehicles. NRDC has been active in promoting this objective since the passage of the Clean Air Amendments of 1970, 84 Stat. 1676, 42 U.S.C. 1857, *et seq.* In 1971 NRDC commented on EPA regulations for the development of State air pollution control plans. In 1972 NRDC reviewed plans submitted by the States and commented to EPA that such plans failed to adequately control motor vehicle air pollution. When EPA approved such inadequate State plans in 1972, NRDC petitioned for judicial review and prevailed in court. *NRDC v. EPA* 475 F.2d 968 (D. C. Cir. 1973). To assist citizen participation in the development of State programs to control vehicular air pollution NRDC published in January 1973 a citizen's manual: *Transportation Controls for Clean Air*. When the States submitted plans in 1973 providing for control of motor vehicle air pollution NRDC submitted comments to the States and to EPA. When EPA proposed its regulations for such programs in 1973 NRDC again submitted comments. The regulations under challenge here are a product of this process in which NRDC, on behalf of its members, has had a deep and continuing interest.

In these cases the various parties are asserting the governmental interests of the federal and State components of our constitutional system. NRDC seeks leave to file the attached brief *amicus curiae*, adopting the position and arguments of the petitioners-intervenors in No. 75-1055, in order to present a position which reflects not only the interests of the State and federal governments but also the interests of the people of the United States, in particular, NRDC's individual members, who are exposed to harmful levels of air pollution. These persons are the intended beneficiaries of the Clean Air Act. The outcome of these cases could have a significant effect on their health and welfare.

Respectfully submitted,

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September 10, 1976

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STATEMENT OF INTEREST

As more fully set forth in the attached motion for leave to file this brief, the Natural Resources Defense Council (NRDC), on behalf of its 22,000 members, has been active in the development of the EPA regulations under challenge in these cases. The State-federal conflict which has developed over these air pollution control regulations has prevented any significant action to reduce vehicular air pollution. As a result, many of NRDC's members residing in the States represented in these cases continued to be exposed to air pollution which is harmful to health. In NRDC's opinion if the EPA action is found unconstitutional, their members and the rest of the people of the United States will be exposed to harmful pollution levels for many more years.

ARGUMENT

In NRDC's opinion EPA's actions are authorized by the Clean Air Act and do not violate the Constitution. NRDC endorses and adopts as its position before this Court the Brief for Petitioners-Intervenors in No. 75-1055, and the argument set forth therein.

The vehicular pollution control programs addressed by EPA's regulations in these cases require significant changes in transportation habits. States have been reluctant to make these changes in the past. NRDC believes that this reluctance will continue unless each State is convinced that other States with similar pollution problems will make equal efforts to clean the air. The actions of the federal government which are challenged in these cases help to assure each State that the necessary efforts will be made by all States with severe pollution problems.

CONCLUSION

NRDC requests this Court to reverse the decisions of the Fourth and Ninth Circuits below and to reverse in part the decision of the D.C. Circuit below.

Respectfully submitted,

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*Attorney for Natural Resources
Defense Council
as amicus curiae*

September 10, 1976

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